

Message Text

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72

ORIGIN L-03

INFO OCT-01 AF-10 ADP-00 AID-20 EB-11 IGA-02 CIAE-00

INR-10 NSAE-00 RSC-01 /058 R

DRAFTED BY L/ AF: MASPIEGEL: MMP

6/20/73 EXT 23737

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AF/ E: AHARDY

AID/ AFR/ ESA: JKNOLL

AID/ GC/ AFR: AMUNTSINGER (INFO)

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R 202109 Z JUN 73

FM SECSTATE WASHDC

TO AMEMBASSY MOGADISCIO

INFO AMEMBASSY NAIROBI

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E. O. 11652: N/ A

TAGS: EAID, OGEN, SO, US

SUBJECT: AMELCO

REF: (A) MOGADISCIO 889

(B) STATE 111557

1. L/ AF SPOKE WITH BANK OF HAWAII VICE PRESIDENT BY TELEPHONE TO DISCUSS POINTS SET FORTH REF (A). BANK OF HAWAII RECOUNTED ITS EARLIER (MAY 23) CABLES TO SCB TURNING DOWN TWO LETTERS OF CREDIT. ACCORDING TO BANK OF HAWAII TWO LETTERS INVOLVED-- ONE FOR \$164,545 PAYMENT OF WHICH WAS REFUSED BECAUSE IT WAS RECEIVED ON MAY 21 RATHER THAN BY MAY 15 WHICH WAS EXPIRATION DATE; SECOND FOR \$1,100,000 PAYMENT OF WHICH WAS REFUSED BECAUSE IT WAS RECEIVED ON MAY 21 WHILE EXPIRATION DATE WAS MAY 15 AND ALSO BECAUSE PRESENTATION DID NOT CONTAIN ANY STATEMENT THAT AMOUNT DRAWN REPRESENTED UNPAID INDEBTEDNESS DUE AS OF FEBRUARY 1, 1973 OF AMELCO.

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2. BANK OF HAWAII EXPLAINED ITS UNDERSTANDING OF SCB POSITION EXPLAINED PARA 3 REF (A) THAT AS TO SECOND (LARGER) LETTER SCB WAS TO HAVE CERTIFIED AMELCO INDEBTEDNESS AS OF FEBRUARY 1 (AND THUS APPARENTLY NOT CONTINUE AMELCO ACCOUNT BEYOND THAT DATE TO MAY 15) AND SUBMIT SUCH CERTIFICATION TO BANK OF HAWAII BY MAY 15. AS TO A SMALLER FIRST LETTER IT WAS APPARENTLY UP TO SCB TO ARRANGE CUT OFF DATE FOR AMELCO ACCOUNT THEREUNDER SO THAT CERTIFIED INDEBTEDNESS FIGURE COULD BE OBTAINED IN TIME TO SUBMIT TO BANK OF HAWAII BY MAY 15.

3. FROM REVIEW OF DOCUMENTS BOTH INTERPRETATIONS COULD BE REASONABLE. DOCUMENT DATED JUNE 20, 1972 EXTENDING EXPIRATION DATE TO FEBRUARY 1, 1973 REQUIRED QUOTE SIGNED STATEMENT IS TO SHOW THAT THE AMOUNT DRAWN REPRESENTS THE UNPAID INDEBTEDNESS DUE AS OF FEBRUARY 1, 1973 OF AMELCO UNQUOTE. SUBSEQUENT LETTER EXTENDING EXPIRATION DATE TO MAY 15, 1973 CONTAINS NO MENTION OF REQUIRED STATEMENT THAT AMOUNT REQUESTED REFLECTS INDEBTEDNESS AT CERTAIN DATE. DEPT NOT IN POSITION TO JUDGE WHETHER DATE IN REQUIRED STATEMENT SHOULD OR SHOULD NOT HAVE BEEN CONSIDERED CHANGED BY IMPLICATION IN AMENDING DOCUMENT. APPEARS REASONABLE THAT IT SHOULD NOT SINCE DOCUMENT GIVING EXTENSION OF L/ C TO FEBRUARY 1 DID SO EXPLICITLY.

4. DEPT NOT IN POSITION TO DETERMINE FROM REST OF DOCUMENTS WHICH PARTY CORRECT, EITHER ON DATES AND REQUIRED STATEMENT OR ON PROPRIETY OF REFUSAL BY BANK OF HAWAII TO OVERLOOK DEFECTS OR PERMIT SCB TO CORRECT THEM. BANK OF HAWAII CONTINUES TO TAKE POSITION THAT, ON ADVICE OF COUNSEL, THEY DID NOT HONOR DRAFTS AND THAT ONLY AMELCO CAN WAIVE DEFECTS. (FYI: BASED UPON SUBSEQUENT CONVERSATION WITH CHARLES GRIFFIN NOTED BELOW, APPEARS AMELCO NOT RPT NOT LIKELY TO WAIVE.) UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS REFERRED TO IN DOCUMENTS SUBMITTED BY EMBASSY APPEARS TO PERMIT BANK OF HAWAII TO DETERMINE ON THE BASIS OF THE DOCUMENTS ALONE WHETHER PRESENTATION IS DEFECTIVE; IF THEY SO DETERMINE THEIR OBLIGATION UNDER UNIFORM CUSTOMS IS TO INFORM EXPEDITIOUSLY SCB OF DEFECTS AND HOLD OR RETURN DOCUMENTS FOR SCB INSPECTION.

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5. L/ AF ALSO SPOKE WITH GRIFFIN OF AMELCO CONCERNING POSSIBILITY OF MEETING WITH SOMALIS IN NEUTRAL SITE, PARA 6, REF (B). GRIFFIN NOW INSISTS THAT MEETING USELESS UNLESS DEPT (INCLUDING AID) WILLING TAKE STAND ON MERITS OF ISSUES IN DISPUTE. FURTHER, GRIFFIN STATED THAT SINCE DRAFTS REFUSED BY BANK OF HAWAII ONLY PARTIES INVOLVED ARE GSDR, AMELCO, PARSONS, AND DEPT AND AID.

6. AID/ DEPT DO NOT WISH TO BECOME MORE DEEPLY INVOLVED IN MERITS OF THIS DISPUTE. BESIDES PRECEDENT THIS WOULD SET FOR OTHER AID CONTRACTORS IN TROUBLE, SUCH A ROLE WOULD INEVITABLY LEAD TO ALLEGATIONS EITHER FROM AMELCO THAT USG NOT SUPPORTING AMERICAN INTERESTS OR FROM SCB THAT USG-GSDR RELATIONS BEING FORSAKEN. FURTHER, ACTIVE ROLE WOULD REQUIRE AN APPRECIATION OF FACTS WHICH NEITHER SIDE WOULD SUPPLY ON UNBIASED BASIS AND OF LAW WHICH DEPT LAWYERS NEITHER COMPETENT NOR LEGALLY PERMITTED TO PROVIDE.

7. NOTWITHSTANDING AID/ DEPT RELUCTANCE TO BECOME INVOLVED AND GRIFFIN' S EXPECTATIONS PARA 5 ABOVE, BELIEVE THERE MAY BE MERIT IN SOMALI' S ASKING FOR MEETING WITH AMELCO TO DEFINE ISSUES AND POSSIBLY RESOLVE SOME OR ALL OF THEM.

8. BECAUSE BANK OF HAWAII OBVIOUSLY WILL NOT PAY WITHOUT EITHER (1) PERMISSION OF AMELCO, WHICH IS NOT FORTHCOMING, (2) COURT ORDER, OR (3) OTHER PROTECTION AGAINST THEIR LOSING AMOUNT PAID, DEPT AGAIN SUGGESTS SCB RETAIN PRIVATE COUNSEL IN EFFORT TO OBTAIN PAYMENT. ROGERS

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*** Current Classification *** LIMITED OFFICIAL USE

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